IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

RSA.No. 394 of 2007()

AS.381/2003 of DISTRICT COURT, THRISSUR

.....

: APPELLANT/APPELLANT/PLAINTIFF

DIVAKARAN,
S/O.MOONNUMOOLAYIL KUMARAN,
AMALANAGAR DESOM,
PUZHAKKAL VILLAGE, THRISSUR TALUK.

BY ADV. SRI.V.BINOY RAM

RESPONDENTS: RESPONDENTS/DEFENDANTS

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1. KUMARAN,
KURUPPUAMVALAPPIL KRISHNAN,
PURANATHIKARA VILLAGE, DESOM,
THRISSUR TALUK, DISTRICT.

2. KRISHNANKUTTY,
KURUPPAMVALAPILL KRISHNAN,
PURANATHUKARA VILLAGE, DESOM,
THRISSUR TALUK, DISTRICT.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 394 OF 2007

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DATED THIS THE 6th DAY OF JULY, 2007

JUDGMENT

Plaintiff in O.S.170 of 1988 on the file of Munsiff Court, Thrissur is the appellant. Defendants are respondents. Appellant instituted the suit seeking a decree for permanent prohibitory injunction restraining respondents from trespassing into the plaint schedule property contending that he is in absolute possession of the plaint schedule property. Respondents filed a written statement disputing the right and possession as well as description of the plaint schedule property.

2. Learned Munsiff on the evidence found that the plaintiff did not establish either possession of the property or the description of the plaint schedule property and dismissed the suit. Appellant challenged the decree and judgment before District Court, Thrissur in A.S.381 of 2003. Learned District Judge on reappreciation of evidence, confirmed the finding of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for the appellant was heard. The argument of the learned counsel was that first appellate

court should have remanded the case to enable appellant to take out a commission with the assistance of a Surveyor and therefore the decree and judgment are to be interfered. First appellate court has considered this aspect and held that even in the appeal memorandum there is no case that appellant did not get sufficient opportunity to take out a commission and there was no prayer for remand also. When suit itself is for perpectual injunction, unless the identity of the plaint schedule property is established, appellant is not entitled to the decree. The trial court on appreciation of evidence and first appellate court on reappreciation of evidence found that appellant did not establish his possession. That factual finding cannot be interfered in exercise of the powers of this court under Section 100 of Code of Civil Procedure. In such circumstances, no substantial question of law is involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-